

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Application by SBC Communications Inc.,)	
Pacific Bell Telephone Company, and)	WC Docket No. 02-306
southwestern Bell Communications Services,)	
Inc. for Provision of In-Region, InterLATA)	
Services in California)	

REPLY AFFIDAVIT OF JOHN S. HABEED
REGARDING STRUCTURAL SEPARATION OF ADVANCED SERVICES

TABLE OF CONTENTS

SUBJECT	PARAGRAPH
PROFESSIONAL EXPERIENCE	1
EXECUTIVE SUMMARY	3
THE BROADBAND TRANSPORT MARKET IN PACIFIC'S SERVICE AREAS IN CALIFORNIA IS COMPETITIVE	4
ADDITIONAL INFORMATION RESPONSIVE TO J'S NUMBER	7
CONCLUSION	9

I, JOHN S. HABEEB, being of lawful age, being duly sworn, depose and state:

PROFESSIONAL EXPERIENCE

1. My name is John S. Habeeb. My business address is 300 N. Convent, Room 1998, San Antonio, TX **78205**. I am Director of Regulatory for SBC Advanced Solutions, Inc. ("ASI").
2. I am the same John S. Habeeb that filed an Initial Affidavit (App. A, Tab 8) on September 20, 2002.

EXECUTIVE SUMMARY

3. The purpose of my Reply Affidavit is to provide information responsive to the allegation of DIRECTV Broadband, Inc. ("DIRECTV") that SBC is engaged in a "price squeeze" in providing broadband transport in California.¹ Specifically, I am providing information demonstrating that the broadband market in Pacific's service areas in California is competitive, and ASI's prices for DSL Transport Service are comparable to those of other providers. I am also providing additional information responsive to the allegation of XO California, Inc. ("XO") that "Pacific has refused to port numbers in a timely and efficient manner where migrating customers purchase both voice and DSL service from SBC Pacific."²

**THE BROADBAND MARKET IN PACIFIC SERVICE AREAS
IS COMPETITIVE**

4. As fully explained in my initial affidavit, ASI's business plan is significantly concentrated on the provision of Wholesale DSL Transport to Internet Service

¹ Comments of DIRECTV at 4-7.

² comments of XO at 22.

Providers (“ISPs”), both affiliated and unaffiliated. ASI currently provides Wholesale DSL Transport to several hundred ISPs in its 13-state region,

5. Before an ISP can purchase Wholesale DSL Transport from **ASI**, it must establish ATM connectivity. The ATM connectivity can be purchased from **ASI’s** FCC Tariff No. 1.³ Once ATM connectivity is established, the **ISP** may purchase **ASI’s** Wholesale DSL Transport to reach a specific end user of the **ISP**.⁴ Under the provisions of **ASI’s** FCC Tariff No. 1, **ASI** provides Wholesale DSL Transport, on non-discriminatory rates, terms, and conditions, to all ISPs (including Pacific Bell Internet Services (“PBI”)) for their use in providing a DSL-based Internet access service at retail to their subscribers.⁵ **ASI** offers ISPs an array of terms, speeds, and rates for **ASI’s** Wholesale DSL Transport, including a volume and term discount plan.⁶ Under this plan, an ISP can receive varying discounts off the month-to-month Wholesale DSL Transport price, if it commits to certain volumes within a 12-month period. Currently, **ASI** offers Wholesale DSL Transport of up to 1.5 Mbps for \$39 per month on a month-to-month basis with no term or volume commitment and for \$35 per month with a one-year and 250+ in service volume commitment. **ASI** also has grandfathered

³ **ASI** FCC Tariff No. I (filed Sept. 7, 2001 and effective Sept. 10, 2001) is available on the **SBC** web site at http://www.sbc.com/public_affairs/regulatory_documents/tariffs/1,5932,281,00.html.

ASI believes that it is a non-dominant carrier, and filed the above-reference tariff out of an abundance of caution, to avoid any dispute concerning the proper regulatory treatment of its services after the decision of the United States Court of Appeals for the District of Columbia Circuit in *Association of Comm. Ent. V. FCC*, 235 F.3d 662 (D.C. Cir. 2001). In fact, **SBC** has petitioned the FCC for a determination that **ASI** and all other **SBC** affiliates are non-dominant carriers in the provision of advanced services. See **SBC** Petition for Expedited Ruling that it is Non-Dominant in Its Provision of Advanced Services and for Forbearance from Dominant Carrier Regulation of Those Services, CC Docket No. 01-337 (FCC filed Oct. 3, 2001).

⁴ The serving ISP must separately obtain transport necessary to connect its server to **ASI’s** ATM cloud.

⁵ **ASI** FCC Tariff No. 1, § 6.

⁶ *Id.*, § 6.4.

Volume Discount Plan (“VDP”) customers in California that pay a rate of \$30 per month for the Wholesale DSL Transport product offering of 384 Kbps to 1.5 Mbps with a four year term and 750,000 volume commitment.

6. ASI’s Wholesale DSL Transport Service is not an ISP’s only available choice for DSL Transport in Pacific’s service areas in California. Covad competes directly with ASI in providing DSL Transport to ISPs, by purchasing UNEs from Pacific or other facility providers. Covad’s wholesale DSL transport rates are confidential. However, the rates for Verizon’s wholesale DSL transport product (which it provides within its service areas) are an example of wholesale DSL rates comparable to ASI’s. For instance, Verizon currently offers wholesale DSL transport for \$29.95 per month for up to 768 Kbps down/128 Kbps up, with a five year term and one million volume commitment.’ This is similar to ASI’s 384 Kbps to 1.5 Mbps grandfathered VDP product offering at a rate of \$30 per month. Furthermore, ISPs have the option to bundle access with alternate broadband transport technologies, such as cable modem and satellite.

ADDITIONAL INFORMATION RESPONSIVE TO XO’S NUMBER PORTING ALLEGATION

7. XO alleges that Pacific has not satisfied Checklist Item 11, Number Portability, because “Pacific has refused to port numbers in a timely and efficient manner where migrating customers purchase both voice and DSL Internet service from Pacific Bell.”⁸ In my initial affidavit, I explained that when ASI receives a disconnect order for its DSL Transport service from an ISP, ASI in turn submits a

⁷ See Verizon Advanced Services Inc. FCC Tariff No. 1, Part III, at 601, § 5.1.6 (effective June 7, 2000).

⁸ Comments of XO at 22.

disconnect order for the HFPL UNE to Pacific in an expeditious manner, using the same processes and procedures regardless of whether the disconnect order is received from an unaffiliated ISP or from PBI, Pacific's affiliated ISP. Further, when an ISP (whether affiliated or unaffiliated) submits a DSL Transport service disconnect order to **ASI**, ASI allows the ISP to choose a disconnect date as early as **2** business days from the date ASI receives the disconnect order from the ISP. With respect to PBI, ASI's affiliated ISP, I have confirmed that it is PBI's policy and practice to electronically transmit a Wholesale DSL Transport service disconnect order to ASI at or nearly simultaneously to the point in time when the PBI customer has contacted PBI's service representative and confirmed that he or she wishes to disconnect Wholesale DSL Internet Service. Unless the end user indicates otherwise, PBI will select the earliest DSL disconnect date available – *i.e.*, 2 business days later.

8. **ASI**, in turn, electronically sends a notice to Pacific to disconnect the HFPL UNE, selecting the same disconnect date that PBI has selected to disconnect **ASI's** DSL transport service. Thus, for example, if a PBI end user calls one of its service representatives on Tuesday and asks to “disconnect my PBI Internet Service as soon as possible,” or simply asks to “disconnect my PBI DSL Internet Service,” PBI's practice is to transmit the HFPL disconnect notice to ASI with sufficient lead time so that Pacific, upon receipt of the ensuring disconnect request from **ASI**, can process the disconnect request by the end of the day Thursday (**2** business days from the time the end user first called PBI to disconnect his or her DSL Internet Service).

CONCLUSION

9. Pursuant to ~~Part~~ II. E. of the Consent Decree entered into between SBC Communications Inc. and the Federal Communications Commission, released on May **28,2002**, **see** Order, *SBC Communications, Inc.*, 17 FCC Rcd 10780(2002), I hereby affirm that I have (1) received the training SBC is obligated to provide to all SBC FCC Representatives; **(2)** reviewed and understand the SBC Compliance Guidelines; **(3)** signed an acknowledgment of my training **and** review and understanding of the Guidelines; and **(4)** complied with the requirements of the SBC Compliance Guidelines.
10. This concludes my affidavit.

STATE OF TEXAS)
)
COUNTY OF BEXAR)

I declare under penalty of perjury that the foregoing is true and correct

Executed on October 30, 2002.

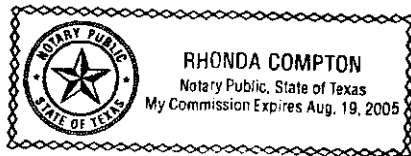


JOHN S. HABEEB

Subscribed and sworn to before me this 30th day of October, 2002.



Notary Public



**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Application by SBC Communications Inc.,)	
Pacific Bell Telephone Company, and)	
Southwestern Bell Communications Services, Inc.)	
for Provision of In-Region, InterLATA)	WC Docket No. 02-306
Services in California)	

REPLY AFFIDAVIT OF ROBERT L. HENRICHS

SUBJECT	PARAGRAPH
EXECUTIVE SUMMARY	2
THE BIENNIAL AUDIT RESULTS DEMONSTRATE THAT PACIFIC AND ITS SECTION 272 AFFILIATE WILL OPERATE IN ACCORDANCE WITH SECTION 272	5
CONCLUSION	12

Schedule of Attachments

Attachment A	“Report of Independent Accountants on Applying Agreed-Upon Procedures, CC Docket No. 96-15 0
Attachment B	“Independent Auditor’s Opinions Regarding Cost Allocation Manual Audits of Pacific Bell Telephone Company for 1999, 2000, and 2001”

I, ROBERT HENRICHS, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

1. My name is Robert Henrichs. I am the same Robert Henrichs that filed **an** Initial Affidavit on September 20, 2002 (App. A, Tab 9).

EXECUTIVE SUMMARY

2. The purpose of my reply affidavit is to address the allegation of AT&T Corporation (“AT&T”) that Pacific Bell and Southwestern Bell Communication’s Services, Inc. (“SBCS”), Pacific’s section 272 affiliate, will not operate in accordance with section 272 once SBC’s 271 application for California is granted. My initial affidavit, as well as the affidavits of Linda Yohe (App. A, Tab 24) and Joe Carrisalez (App. A, Tab 2), provide extensive evidence demonstrating how Pacific and SBCS will comply with the section 272 rules once this 271 application is granted.
3. This reply affidavit provides additional support for that conclusion by providing an overview of the results of the Joint Federal/State Oversight Team’s’ first biennial audit **of** the compliance of the various SBC BOCs’ (including Pacific) and SBCS with the section 272 rules (hereinafter “Biennial Audit”), with **an** emphasis on the results of the Biennial Audit³ with respect to the SBC BOCs’ and SBCS’s compliance with section 272

¹ The “Joint Federal/State Oversight Team” comprised of staff members from 11 state regulatory agencies, including the California Public Utilities Commission, and the Federal Communications Commission. SBC operates in the following 13 states: Arkansas, Kansas, Missouri, Oklahoma, Texas, California, Nevada, Illinois, Indiana, Michigan, Ohio, Wisconsin, and Connecticut. Representatives from Nevada and Michigan did not participate with the Joint Federal/State Oversight Team.

² SBC BOCs refer to the SBC operating telephone companies, operating as incumbent local exchange carriers (ILECs), and include the following: Illinois Bell Telephone Company; Indiana Bell Telephone Company, Incorporated; Michigan Bell Telephone Company; Nevada Bell; The Ohio Bell Telephone Company; Pacific *Bell Telephone*; Southwestern Bell Telephone Company; and Wisconsin Bell, Inc. (emphasis supplied).

³ See Attachment A, Report of Independent Accountants on Applying Agreed-Upon Procedures, CC Docket No. 96-150. (“*Biennial Audit Report*”).

accounting safeguards. The results of the first Biennial Audit, which covered the period July 10, 2000 to July 9, 2001, was initially filed with the Commission on December 16, 2001, subjected to a claim of confidential treatment for portions of the report. It subsequently was filed without a request for confidential treatment on September 16, 2002, and now is publicly available. A copy of the report is attached hereto as Attachment A.

4. The first Biennial Audit results are particularly significant because the audit period covered SBCS's first year of operation in the state of Texas after 271 relief was granted, and roughly four months in Kansas and Oklahoma after 271 relief was **granted**.⁴ The Biennial Audit results demonstrate compliance with the section 272 requirements in all material respects. **SBC** believes it is the best evidence of how Pacific and its Section 272 affiliates will comply with these requirements when 271 relief is granted in California.

THE BIENNIAL AUDIT RESULTS DEMONSTRATE THAT PACIFIC AND ITS SECTION 272 AFFILIATE WILL OPERATE IN ACCORDANCE WITH SECTION 272

5. Section 272(d) requires the section 272 affiliate to "obtain and pay for a joint Federal/State audit every 2 years and performed by an *independent* auditor to determine whether such company has complied with this section [272] and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under subsection (b)."⁵ Among the

⁴ Section 271 relief was granted for Texas effective July 10, 2000, and for Kansas and Oklahoma effective March 7, 2001.

⁵ 47 U.S.C. § 272(d)(1).

objectives of the Biennial Audit are to determine whether the SBC Bell Operating Companies (SBC BOCs) and their section 272 affiliates⁶:

- operated independently from each other;
- maintained separate **books**, records, and accounts in the manner prescribed by the Commission;
- conducted all transactions with each other on an arm's length basis with the transactions reduced to writing and made available for public inspection; and
- accounted for all transactions with each other in accordance with the accounting principles and rules approved by the Commission.

6. To verify the 272 affiliates operated independently from the SBC BOCs, the auditors inspected the certificates of incorporation, bylaws, articles of incorporation, and functional organizational charts. The auditors also obtained a list of services from affiliates and non-affiliates and confirmed that operating, installation, and maintenance ("OI&M") functions obtained by the 272 affiliate were not provided by any SBC BOC or non-272 **SBC** affiliate.⁷ In addition, the auditors verified after an inspection of invoices that switching facilities were not obtained from the SBC BOCs.⁸
7. To confirm that the SBC BOCs and the 272 affiliates maintained separate books and records, the auditors obtained and documented the accounting procedures and policies utilized by each Section 272 affiliate. This documentation included an understanding of

⁶ The "section 272 affiliates" refer to SBC Communications Services, Inc ("SBCS") and Ameritech Communications, Inc. ("ACI").

⁷ *Biennial Audit Report* at Appendix A, pages 1-2.

⁸ *Id.* at 2.

the accounting systems, processes, transaction flows, and control points affecting revenue, accounts receivable, cash receipts, purchasing, accounts payable, cash disbursements, payroll, fixed assets, and recording of affiliate transactions.’ The auditors noted that each Section **272** affiliate maintained a separate general ledger from the SBC BOCs.¹⁰

8. To verify that transactions between the SBC BOCs and the 272 affiliates were at arm’s length, reduced to writing, and made available for public inspection, and in conformance with the Commission’s rules, the auditors documented the process followed when the 272 affiliates requested services from the SBC BOCs. The auditors “noted that the information provided on the Internet is sufficiently detailed to allow evaluation for compliance with the FCC’s accounting rules because entire agreements are posted on the SBC Internet site.”” They also noted that “all the details needed to allow evaluation for compliance with the FCC’s accounting rules are made available” **for** public inspection and that the “internet posting of the agreements included rates, terms, conditions, frequency, effective dates, termination dates, description of services, and method **of pricing.**”¹²
9. The auditors also randomly sampled affiliate transactions for testing, documented the SBC BOCs processes for obtaining fully distributed cost (“FDC”) and fair market value (“FMV”), and verified payment for services where a prevailing market price (“PMP”) had not been established for affiliate transactions or was not subject to agreements filed

⁹ *Id.* at 3-5

¹⁰ *Id.* at 3.

¹¹ *Id.* at 16.

¹² *Id.* at 16.

with a state public utility commission.¹³ The results of the procedures performed clearly indicate that the SBC BOCs and **272** affiliates comply with the FCC's affiliate transactions rules and the requirements of Section **272**.

10. For example, the audit results showed that the services selected by the auditors for testing were appropriately valued at FDC or FMV in a manner consistent with the FCC's affiliate transactions rules. With respect to services provided by the SBC BOCs to the **272** affiliates, the auditors tested 35 of the largest monthly billed amounts for each service and noted that "the sampled amounts were priced at the higher of FDC or FMV, or PMP in accordance with the affiliate transactions standards" except in one instance where SBC had yet to complete the necessary true-up process.¹⁴ With respect to services provided by the **272** affiliates to the SBC BOCs, the auditors compared unit charges to PMP, FDC, or FMV as appropriate for a sample of six services for one month.¹⁵ The auditors found that, for each invoice provided by SBCS to an SBC BOC, "these services were billed by SBCS in accordance with the affiliate transactions standards."¹⁶ The auditors further noted "for the invoices provided that all unit **rates** charged for each service agreed to SBCS's affiliate agreements with the SBC BOCs without exception."¹⁷ The audit results also showed that SBC complies with the affiliate transactions rules with respect to other affiliates that provide services to the SBC BOCs and **272** affiliates, with

¹³ *Id.* at 17-21.

¹⁴ *Id.* at 20.

¹⁵ *Id.* at 21.

¹⁶ *Id.* at 21.

¹⁷ *Id.* at 21.

the auditors noting “that the costing methodology used by all central services organizations is FDC as documented in SBC’s Cost Allocation Manual.”¹⁸

11. Finally, I would also note that, in connection with their Cost Allocation Manual (“CAM”) audits mandated under Part **64** of the FCC’s rules, the independent auditors annually opine on whether the SBC BOCs are in compliance with the Commission’s cost allocation and affiliate transaction rules related to all non-regulated affiliates (including 272 affiliates). The SBC BOCs have demonstrated compliance for over ten years by receiving unqualified opinions that the books of accounts are fairly presented in all material respects **as** a result of their compliance with the Commission’s rules. A copy of the three most recent CAM audit opinions for Pacific are attached hereto **as** Attachment B.

CONCLUSION

12. For the foregoing reasons, as well **as** those stated in my initial affidavit and the affidavits of Linda Yohe and Joe Carrisalez, the Commission should conclude that Pacific and SBCS will comply with the requirements of Section 272 of the Act once section 271 relief is granted.
13. Pursuant to Part II. E. of the Consent Decree entered into between SBC Communications Inc. and the Federal Communications Commission, released on May 28, 2002, see Order, In the Matter of SBC Communications, Inc., 17 FCC Rcd. 10780(2002), the undersigned hereby affirms that he has **(1)** received the training SBC is obligated to provide to all SBC FCC Representatives; **(2)** reviewed and understand the SBC Compliance

¹⁸ *Id.* at 22.

Guidelines; (3) signed an acknowledgment of my training and review and understanding of the Guidelines; and (4) complied with the requirements **of** the SBC Compliance Guidelines.

14. This concludes my affidavit.

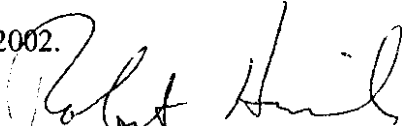
STATE OF TEXAS

COUNTY OF DALLAS

)
)
)


I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/31/02, 2002.



Robert L. Henrichs

Subscribed and **sworn** to before me this 31st day of October, 2002.



Notary Public

